

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

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In re: §      Chapter 11  
STRUDEL HOLDINGS LLC and §      Case No. 23-90757 (CML)  
AVR AH LLC, §      (Jointly Administered)  
Debtors.<sup>1</sup> §  
§  
§

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**EMERGENCY MOTION FOR STATUS CONFERENCE**

(Relates to Docket Nos. 245, 260)

**Emergency relief has been requested. Relief is requested not later than November 30, 2023.**

**If you object to the relief requested, or you believe that emergency consideration is not warranted, you must appear at the hearing, if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.**

Debtors respectfully request that a Status Conference be set on or before November 30, 2023 relating to sale issues and the *Notice of Postponed Sale* [Dkt. No. 260].

**Brief Background**

1. On November 9, 2023, the Court entered its Order (a) Authorizing and Approving Sale of Assets Free and Clear of All Liens, Claims, Encumbrances and Other Interests, (b) Approving the Purchase and Sale Agreement, (c) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (d) Granting Related Relief [Docket No. 245] (the “Sale Order”).

2. The Sale Order provided for, among other things, (i) approval of a sale to Chiron AVR LLC (the “Purchaser”) by credit bid in the amount of \$30.5 million on or before November

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: AVR AH LLC (0148) and Strudel Holdings LLC (5426). The Debtors’ service address is: PO Box 4068, Aspen, CO 81612.

22, 2023 and (ii) designation of Fleeger Family First LP (the “Back-Up Bidder”) as the back-up bidder if the Purchaser failed to close by November 22, 2023.

3. On the evening of November 21, 2023, the Purchaser provided a Notice of Default under Purchaser Agreement (the “Notice of Default”) to the Debtor. *See Exhibit 1.* The Debtor disputes the Notice of Default *and* believes the Purchaser’s demand would have required the Debtor to immediately pay disputed amounts to the HOA (which the Debtor lacked liquidity to do on the eve of the sale closing), including substantial alleged ***pre-petition*** claims in contravention of the Bankruptcy Code. Despite this, the Debtor and the Purchaser continued to negotiate over a resolution of the Notice of Default in order to meet the November 22, 2023 closing deadline.<sup>2</sup>

4. However, on November 22, 2023, the Debtor was notified by the Purchaser that Fidelity National Title (the title company handling the sale) had experienced a nation-wide data breach and was blocking access to all title and escrow services until at least November 28, 2023 (*see* <https://www.realestatenews.com/2023/11/21/hack-at-nations-largest-title-company-stalls-closings>). The Debtor separately confirmed this with Fidelity National Title.

5. Upon learning of the data breach, the Debtor attempted to notify the Back-Up Bidder’s counsel both by phone and email of the title company issues and requested a one-week extension of all deadlines under the Sale Order. *See* email request, **Exhibit 2.** Unfortunately, given the timing of this request (one day before the Thanksgiving Holiday), the Debtor was unable to reach counsel for the Back-Up Bidder.

6. Upon further consultation with the Purchaser and title company, the parties determined that the November 22, 2023 closing could not occur as scheduled and executed the

<sup>2</sup> The Debtor reserves the right to assert that it is the Purchaser that is in default under the Purchase Agreement.

amendment attached as **Exhibit 3**, extending the closing date to November 28, 2023 (the “Amendment”).

7. On November 23, 2023 (Thanksgiving Day), the Debtor filed its Notice of Postponement of Closing [Docket No. 260] and served it by email on counsel for the Back-Up Bidder.

8. On November 24, 2023, the Back-Up Bidder notified the Debtor that it believes the Purchaser’s failure to close by November 22, 2023, regardless of the reason, triggered the Back-Up Bidder’s rights to close on its Back-Up Bid and that the Amendment was not permitted under the Sale Order. *See **Exhibit 4**.*

9. Since filing the Notice of Postponement of Closing, the Debtor and the Purchaser have continued to attempt to resolve the issues raised in the Notice of Default and accomplish a closing of the sale by November 28, 2023. However, the Purchaser’s counsel has now informed the Debtor that Fidelity National Title may be further delayed in closing the sale due to the status of the nationwide data breach.

10. Given the unusual circumstances surrounding the closing, the express terms of the Sale Order and the Debtor’s concerns that the Notice of Default prevented the Debtor from simply pivoting to the Back-Up Bid, the Debtor believed execution of the Amendment was its only option under the circumstances. However, the Debtor does not intend to close on a sale to the Purchaser or Back-Up Bidder absent further order of this Court and an opportunity for the parties’ respective positions to be heard.

**Relief Requested**

11. As a consequence of the foregoing, the Debtor requests an emergency status conference to allow parties to address the Court and seek guidance on a path forward.

12. The Debtor has conferred with counsel for both the Purchaser and Back-Up Bidder and understands that they are available (subject to the Court's availability) for a status conference on Thursday, November 30, 2023.

**Dated: November 27, 2023.**

Respectfully submitted,

*/s/ Joshua W. Wolfshohl*  
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*Counsel for the Debtors and Debtors in Possession*

**CERTIFICATE OF SERVICE**

I certify that on November 27, 2023, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas and by U.S. first-class mail on the parties listed on the attached service list.

*/s/ Joshua W. Wolfshohl*  
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Joshua W. Wolfshohl